

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/26/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-004796

FILED: _____

MICHAEL UROSEVIC, et al.

MICHAEL UROSEVIC
8952 W ACAPULCO
PEORIA AZ 85781-0000

v.

UNIVERSAL BUILDING MAINTENANCE

UNIVERSAL BUILDING
MAINTENANCE
3131 E CAMELBACK RD #120
PHOENIX AZ 85018-0000

SUSAN UROSEVIC
8952 W ACAPULCO
PEORIA AZ 85781-0000
PHX JUSTICE CT-E2
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The underlying action arose out of a claim and counterclaim relating to a dispute concerning the performance of a franchise

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agreement. The franchise was a janitorial service. The Appellants/franchisees did not provide adequate service to some of the accounts provided to them; and complaints were made by customers, ostensibly causing loss of revenue to Appellee/franchisor. The Appellee failed to furnish business revenue within the one-hundred-twenty-day period required by the franchise agreement. The record shows, as noted by the lower court, that both parties were in breach of the franchise agreement.

However, when reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in *State v. Tison*⁶ that "substantial evidence" means:

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

⁵ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the lower court's determination was correct and was supported by substantial evidence.

IT IS THEREFORE ORDERED affirming the decision of the East Phoenix No. 2 Justice Court.

IT IS FURTHER ORDERED remanding this case back for all future proceedings to the East Phoenix No. 2 Justice Court.

⁷ Id. at 553, 633 P.2d at 362.
Docket Code 512